

## Article 74.

### Mortgage in Lieu of Bond.

#### **§ 58-74-1. Mortgage in lieu of required bond.**

An administrator, executor, guardian, collector or receiver, or an officer required to give an official bond, or the agent or surety of such person or officer, may execute a mortgage on real estate, of the value of the bond required to be given by him to the State of North Carolina, conditioned to the same effect as the bond should be, were the same given, with a power of sale, which power of sale may be executed by the clerk of the superior court, with whom said mortgage shall be deposited, upon a breach of any of the conditions of said mortgage, after advertisement for 30 days. (1874-5, c. 103, s. 2; Code, s. 118; Rev., s. 265; C.S., s. 346.)

#### **§ 58-74-5. Mortgage in lieu of security for appearance, costs, or fine.**

Any person required to give a bond or undertaking, or required to enter into a recognizance for his appearance at any court, in any criminal proceeding, or for the security of any costs or fine in any criminal action, may also execute a mortgage on real or personal property of the value of such bond or recognizance, payable to the State of North Carolina, conditioned as such bond or recognizance would be required, with power of sale, which power shall be executed by the clerk in whose court said mortgage is executed, upon a breach of any of the conditions of said mortgage.

No such mortgage on real property executed for the security for costs or fine shall allow a longer time for payment of said costs or fine than six months from the execution thereof, and no mortgage on personal property a longer time than three months, except in cases of appeal, when the time allowed shall be counted from the date of the final decision in the cause.

All legitimate expenses of sale, which shall only be made after due advertisement according to law, shall be paid out of the proceeds of the sale. (1874-5, c. 103, s. 3; Code, s. 120; 1891, c. 425, ss. 1, 2, 3; Rev., s. 266; C.S., s. 347; 1973, c. 108, s. 57.)

#### **§ 58-74-10. Cancellation of mortgage in such proceedings.**

Any mortgage given by any person in lieu of bond as administrator, executor, guardian, collector, receiver or as an officer required to give an official bond, or as agent or surety of such person or officer, or in lieu of bond or undertaking or recognizance for his appearance at any court in any criminal proceeding, or for the security of any cost or fine in a criminal action which has been registered, when such party as administrator, executor, guardian, collector, or receiver has filed his final account and when the time required by statute for the bond given by any administrator, executor, guardian, collector, or receiver to remain in force for the purpose of action thereon has expired, or when the officer required to give an official bond has fully complied with the conditions of such bond and the time within which suit is allowed by law to be brought thereon has expired, or when the person giving such mortgage in lieu of bond has made his appearance at the court to which he was bound and did not depart the court without leave, or paid the cost or fine required, may be canceled or discharged by the clerk of the superior court of the county where such action was pending or where the mortgage in lieu of bond is recorded by recording a satisfaction document pursuant to G.S. 45-37(a)(7), and such satisfaction document shall have the effect to discharge and release all the right, title and interest of the State of North Carolina in and to

the property described in such mortgage. (1905, c. 106; Rev., s. 267; C.S., s. 348; 1921, c. 29, ss. 1, 2; 1925, c. 252, s. 1; 2011-246, s. 9.)

**§ 58-74-15. Validating statute.**

All acts heretofore done by the several superior court clerks, cancelling or satisfying any mortgage, or other instruments, herein mentioned and specified are hereby validated. (1925, c. 252, s. 2.)

**§ 58-74-20. Clerk of court may give surety by mortgage deposited with register.**

In all cases where the clerk of the superior court may be required to give surety, he may deposit a mortgage with the register of deeds, payable to the State, and conditioned, as the bond would have been required, with power of sale. The power of sale shall be executed by the register of deeds, upon a breach of any of the conditions of said mortgage; and the register of deeds shall in all cases immediately register the same, at the expense of the said clerk. (1874-5, c. 103, s. 6; Code, s. 122; Rev., s. 268; C.S., s. 349.)

**§ 58-74-25. Mortgage in lieu of bond to prosecute or defend in civil case.**

It is lawful for any person desiring to commence any civil action or special proceeding, or to defend the same, his agent or surety, to execute a mortgage on real estate of the value of the bond or undertaking required to be given, at the beginning of said action, or at any stage thereof, to the party to whom the bond or undertaking would be required to be made, conditioned to the same effect as such bond or undertaking, with power of sale, which power of sale may be executed upon a breach of any of the conditions of the said mortgage after advertisement for 30 days. (1874-5, c. 103, s. 1; Code, s. 117; Rev., s. 269; C.S., s. 35.)

**§ 58-74-30. Affidavit of value of property required.**

In all cases where a mortgage is executed, as hereinbefore permitted, it is the duty of the clerk of the court in which it is executed to require an affidavit of the value of the property mortgaged to be made by at least one witness not interested in the matter, action or proceeding in which the mortgage is given. (1874-5, c. 103, s. 4; Code, s. 121; Rev., s. 270; C.S., s. 351; 1973, c. 108, s. 58.)

**§ 58-74-35. When additional security required.**

If, from any cause, the property mortgaged in lieu of a bond becomes of less value than the amount of the bond in lieu of which the mortgage is given, and it so appears upon affidavit of any person having any interest in the matter as a security for which the mortgage was given, it is the duty of the mortgagor to give additional security by a deposit of money, or the execution of a mortgage on more property, or justify as required in cases where bond or undertaking is given. (1874-5, c. 103, s. 5; Code, s. 119; Rev., s. 271; C.S., s. 352.)